

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT R. POE,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2003

No. 239713

Wayne Circuit Court

LC No. 01-006603

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from nonjury convictions of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to probation for the controlled substance convictions, to be served consecutively to the mandatory two-year prison term for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first challenges the sufficiency of the evidence. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements of possession with intent to deliver cocaine and heroin are (1) defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the substance to someone else, (3) the substance possessed was cocaine or heroin, and (4) the substance was in a mixture that weighed less than fifty grams. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). The elements of possession with intent to deliver marijuana are similar: (1)

defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the substance to someone else, (3) the substance possessed was marijuana, and (4) the substance was in a mixture that weighed less than five kilograms. MCL 333.7401(2)(d)(iii).

“Possession is a term that ‘signifies dominion or right of control over the drug with knowledge of its presence and character.’” *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). The defendant need not own or have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Wolfe, supra*, 440 Mich 520. Possession may be proved by circumstantial evidence and any reasonable inferences drawn therefrom. *Nunez, supra*. Close proximity to contraband in plain view is evidence of possession. See, e.g., *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995), *People v Williams*, 188 Mich App 54, 57-58; 469 NW2d 4 (1991); *People v Iaconis*, 29 Mich App 443, 459; 185 NW2d 609 (1971).

Actual delivery of the controlled substance is not necessary to prove intent to deliver. *Wolfe, supra*, 440 Mich 524. Intent to deliver may be inferred from all of the facts and circumstances, including the amount of narcotics and the way in which they are packaged, and minimal circumstantial evidence is sufficient. *Id.*; *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). “[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *Hill, supra*, 433 Mich 470-471.

The evidence showed that defendant lived at the house in question. Police observed activity indicative of narcotics trafficking there. A confidential informant, acting under police supervision, made a controlled buy of cocaine at the house and, apparently, identified defendant as the seller because he was named in the search warrant. Defendant had a loaded handgun underneath him and two rifles close by.<sup>1</sup> Defendant had actual possession of heroin, which was found in his pants pocket, and cocaine and marijuana were on the table beside him. Given that defendant was alone in the house admitted that he lived there, and that the drugs and weapons

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<sup>1</sup> The trial court apparently misspoke when it referred at one point to twelve weapons because it correctly noted that the evidence showed that only three guns were recovered. Contrary to defendant’s argument, the trial court did not reject his testimony as incredible because there were twelve weapons but because he claimed not to have seen any guns when they were out in plain view.

were in plain view, the evidence was sufficient to prove constructive possession beyond a reasonable doubt.

The defendant had loose rocks of crack cocaine plus fourteen separate packets of heroin and twenty-four separate packets of marijuana. There was no evidence that the police found any drug paraphernalia associated with personal consumption of drugs. Given that, plus the evidence of suspected narcotics activity and the controlled buy, the evidence was sufficient to prove intent to deliver beyond a reasonable doubt.

Defendant also challenges the sufficiency of the trial court's findings. "A judge who sits without a jury in a criminal case must make specific findings of fact and state conclusions of law." *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). Those findings and conclusions may be placed on the record or incorporated in a written opinion. MCR 6.403. The purpose of this requirement is to facilitate appellate review. *People v Johnson (On Rehearing)*, 208 Mich App 137, 141; 526 NW2d 617 (1994).

Although the trial court did not make a specific finding regarding intent to deliver, it was not required to do so. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). A review of the record shows that the court was aware of the issues and correctly applied the law, and thus, its findings were sufficient. *Legg, supra*.

Affirmed.

/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood